

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/10/10

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE H. A. SMITH

DEPUTY CLERK

HONORABLE
8.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:05 am

BC414602

Plaintiff
Counsel

India S. Thompson ✓
RHEUBAN & GRESEN

OMAR RODRIGUEZ ET AL

VS

Defendant
Counsel

Veronica Von Grabow ✓
MITCHELL SILBERBERG ET AL

BURBANK POLICE DEPARTMENT ET AL

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF ELFEGO RODRIGUEZ TO TAX COSTS;

Matter is called for hearing. Counsel have reviewed the court's written tentative ruling. The court hears argument of counsel. Defendant's counsel advises the court that an amended memorandum of costs was filed which deleted certain items of costs.

The tentative ruling, as modified by the court, issues as the order of the court as follows:

The motion is granted in part and denied in part. The memorandum of costs is altered to reflect a reduction of \$556.58, as explained more fully below.

Plaintiff's amended motion has been disregarded as untimely. The deadline to file a motion to tax costs was October 14, 2010. Plaintiff's amended motion was filed on October 21, 2010, seven days after the deadline. The amended motion did not properly relate back to any notice that plaintiff gave defendant; it includes new arguments and requests. Plaintiff's claim that his amendment was intended to conform to a September 7, 2010 court order on another plaintiff's motion to tax costs has no merit. Plaintiff waited five weeks after that ruling to file its amended motion to tax. Accordingly, the court has considered only plaintiff's original motion and defendant's original opposition.

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NATURE OF PROCEEDINGS:

Item 4(e). Plaintiff's claim that because defendant charged plaintiff Childs with 100% of the deposition costs in another memorandum of costs it would be unfair to charge plaintiff for the same deposition costs has no merit because the court reduced the amount of costs for plaintiff Childs arising out of the depositions to only 20% in a September 7, 2010 ruling. Billing plaintiff for a share of the depositions will not result in a double payment to defendant.

Defendant has not met its burden of supporting why plaintiff should bear the costs of a deposition (Russell Moore's) that was not reasonably necessary for litigation concerning the plaintiff. Ladas v. Calif. State Auto Assn. (1993) 19 Cal.App.4th 761, 774. Defendant makes no argument that the Moore deposition is relevant to plaintiff's case. The costs are taxed by \$150.13 to reflect the Moore deposition costs.

Plaintiff's argument that defendant's request for parking fees during depositions, \$19.06, is unreasonable because it includes parking costs for more than one lawyer is not persuasive. Plaintiff offers no authority for the proposition that costs are unreasonable or outside the bounds of reasonable fees allowed by CCP Section 1033.5(a)(3) when a prevailing party incurs them on account of employing more than one lawyer.

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NATURE OF PROCEEDINGS:

Item 8. Witness fees (\$37.50) for Russell Moore, \$37.50 are taxed because defendant has not met its burden of showing that Moore's testimony was reasonably necessary to advance defendant's litigation with plaintiff.

Item 11. Defendant's cost of \$368.95 for photocopies and court exhibits is not provided for by CCP Section 1033.5(a)(12), which allows for "[m]odels and blowups of exhibits and photocopies of exhibits...if they were reasonably helpful to aid the trier of fact." No trial was held on this matter. Any photocopy or exhibit that defendant made was merely a cost of conducting business and not created to "aid the trier of fact."

Item 13. Plaintiff's objection to defendant's request for a share of the discovery referee's fees and the manner in which the defendant apportions this fee among the plaintiffs is not well taken. Fees for a court-appointed special master to conduct discovery may be allowed as costs under Section 1033.5(c)(4). Winston Square Homeowner's Ass'n v. Centex West, Inc. (1989) 213 Cal.App.3d 282, 292-93. Defendant divided the discovery referee's fee equally among the five plaintiffs for costs incurred by them on April 13, 2010 and then among all four remaining plaintiffs after April 13, 2010. This apportionment is reasonable and fair.

Notice is waived.